

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRENDA K. HURSTON : CASE NO. C-1-01 313
Plaintiff : Magistrate Judge Black
-vs- :
BUTLER COUNTY DEPT. OF JOB : MEMORANDUM OF DEFENDANT
AND FAMILY SERVICES, et al. : BUTLER COUNTY DEPT. OF JOB
 : AND FAMILY SERVICES IN
Defendants. : OPPOSITION TO MOTION AND
 : MEMORANDUM OF PLAINTIFF BRENDA
 : HURSTON FOR AN ORDER COMPELLING
 : DEFENDANT'S PRODUCTION OF
 : DOCUMENTS AND INVENTORY DISCOVERY

Now comes the defendant Butler County Department of Job and Family Services, by and through its undersigned counsel, and for its Memorandum in Opposition to the Motion and Memorandum of Plaintiff Brenda Hurston for an Order Compelling Defendant's Production of Documents and Inventory Discovery does hereby state as follows:

On July 23, 2004, plaintiff served a Request for Production of Documents, Things and Business Records upon defendant requesting seven items. The first of these items was a report of Dr. Randolph dated May 5, 1998. This report was available to plaintiff as it had been previously provided to her own physician and was provided to plaintiff by defendant on October 13, 2004 pursuant to letter via certified mail. See Affidavit

of Michael E. Jacobs, ¶¶ 2 and 3, and Exhibit 1. Plaintiff also requested Personnel Action Forms dated from June 6, 1988 through December 30, 2001. Defendant provided a copy of plaintiff's personnel file to her on October 13, 2004. See Affidavit of Michael E. Jacobs, ¶ 2 and Exhibit 1. Included in that personnel file were numerous Personnel Action Forms which are all that are available. See Affidavit of Margie Laut, ¶3. Those in her file were dated March 7, 1988; May 13, 1988; June 6, 1988 and April 6, 1998. As plaintiff already had the Personnel Action Form dated March 15, 1993 there is no need for defendant to produce the document. Defendant has searched and has been unable to find any other Personnel Action Forms and it is believed that no other documents were retained, if any existed. See Affidavit of Margie Laut, ¶¶ 2, 3 and 5.

With respect to Personnel File Checklists, item three, one was included in the documents produced to plaintiff in her personnel file on October 13, 2004. See Affidavit of Michael E. Jacobs, ¶ 2 and Exhibit 1. Defendant has searched and has been unable to find any other Personnel File Checklists and it is believed that no other Personnel File Checklists were retained, if any existed. See Affidavit of Margie Laut, ¶¶ 2, 3 and 5. With respect to item four, personnel documents which reflect paychecks, no documents fitting this description were found

despite a diligent search; however, some pay related documents were found. All documents responsive to this request have been produced. See Affidavit of Michael E. Jacobs ¶¶ 2 and 5 and Exhibits 1 and 3. With respect to item number five, Personnel Interview Checklists, plaintiff was provided the only document found after a diligent search. See Affidavit of Michael E. Jacobs ¶ 2, Exhibit 1; Affidavit of Margie Laut ¶¶ 2, 3 and 5. It is believed that no other documents were retained, if any existed, and for that reason cannot be produced.

With respect to item number six, no document regarding a request to Personnel for an interview for the Machine Operator II job was found after a diligent search. See Affidavit of Michael E. Jacobs ¶ 5 and Exhibit 3; Affidavit of Margie Laut ¶5. It is believed the document, if it ever existed, was not retained and for that reason cannot be produced. With respect to request number seven, a notification to the plaintiff indicating that she had received the Machine Operator II job position was found after a diligent search. See Affidavit of Michael E. Jacobs ¶ 5 and Exhibit 3.

On July 30, 2004, plaintiff served another Request for Production of Documents, Things and Business Records upon defendant. Some of the items requested were the Agreements between Butler County Department of Human Services and the

AFLCIO Local from November 30, 1987 through 2001. All documents responsive to plaintiff's request have been produced. See Affidavit of Michael E. Jacobs ¶¶ 2, 4, 5 and 6, Exhibits 1-3; Affidavit of Margie Laut ¶¶ 2, 3, 4 and 5.

Plaintiff's requests for documents which have not been provided are not likely to lead to the discovery of admissible evidence as these checklists and other documents do not contain information about plaintiff's performance or subjective comment by supervisors which would be probative to her claims. Additionally, most of the documents sought would be irrelevant as any claim based upon such documents would be barred by the applicable statute of limitations.

As defendant has complied with the request of plaintiff to the extent it can, her Motion for an Order Compelling Production of Documents and Inventory should be denied.

Respectfully submitted,

McGOWAN & JACOBS, LLC

s/Jack C. McGowan

Jack C. McGowan (0005619)

Attorney for Defendants

Butler County Department of Job
and Family Services

246 High Street

Hamilton, Ohio 45011

(513) 844-2000/(513)868-1190 (FAX)

Email: jcm@jcmcgowan.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the within Memorandum in Opposition to Motion and Memorandum of Plaintiff Brenda Hurston for an Order Compelling Defendant's Production of Documents and Inventory Discovery was mailed by certified mail, return receipt requested this 25th day of October, 2004 to Brenda Hurston, pro se, 1812 Grand Avenue, Middletown, OH 45044.

s/Jack C. McGowan

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CGOWAN & JACOBS, LLC
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*ALSO ADMITTED IN KENTUCKY AND INDIANA

October 13, 2004

Ms. Brenda Hurston
1812 Grand Avenue
Middletown, OH 45044

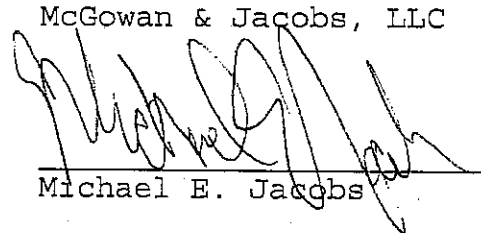
Re: Brenda K. Hurston vs. Butler County Job & Family Services

Dear. Ms. Hurston:

Please find enclosed a copy of Dr. Randolph's May 5, 1998 report. Also enclosed please find a complete copy of your personnel file from the Butler County Department of Job and Family Services. Additionally, enclosed is another copy of the November 30, 1990 agreement between Butler County Department of Human Services, Butler County, Ohio and the American Federation of State, County and Municipal Employees Ohio Council A Local 3062 AFL-CIO. We apologize for not copying all pages and only copying even numbered pages. Lastly, please find enclosed a job audit and classification information.

Sincerely,

McGowan & Jacobs, LLC


Michael E. Jacobs

MEJ:ksj
Enclosures



McGOWAN & JACOBS, LLC
ATTORNEYS AND COUNSELORS AT LAW
246 HIGH STREET
HAMILTON, OHIO 45011

JACK C. MCGOWAN
MICHAEL E. JACOBS*

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*ALSO ADMITTED IN KENTUCKY AND INDIANA

VIA CERTIFIED MAIL

October 19, 2004

Ms. Brenda Hurston
1812 Grand Avenue
Middletown, OH 45044

Re: Brenda K. Hurston vs. Butler County Job & Family Services

Dear. Ms. Hurston:

Enclosed please find the agreement between Butler County Department of Human Services and the AFLCIO Local covering the time frame of December 3, 1987 through October 31, 1989. This would have been in effect as of your hire date in March, 1988.

Yours very truly,

McGowan & Jacobs, LLC

Jack C. McGowan

Jack C. McGowan

JCM:ksj
Enclosure

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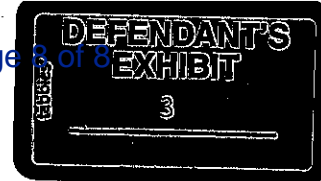
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*ALSO ADMITTED IN KENTUCKY AND INDIANA

October 22, 2004

Ms. Brenda Hurston
 1812 Grand Avenue
 Middletown, OH 45044

Re: Brenda K. Hurston vs. Butler County Job & Family Services

Dear. Ms. Hurston:

Please find enclosed some additional records including two pages of information regarding your pay and leave history, Auditor's records from 1993 to 2001, a memorandum indicating that requests to personnel for interviews for job positions are only kept as far back as 2001, and an Assent to Lateral Class Change from October of 1988.

The Department of Job and Family Services has found no other records responsive to your Requests for Production of Documents, Things and Business Records.

Yours very truly,

McGOWAN & JACOBS, LLC

Jack C. McGowan

JCM:ksj
 Enclosures